IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8127 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DOST MOHD @ DOSTU ABDULKARIM BALOCH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR HL JANI APP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/02/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the order dtd.13th July, 1999 passed by the Police Commissioner, Ahmedabad City, whereby the petitioner was ordered tobe detained under the provisions of the Gujarat Prevention of Anti-social Activities Act,

1985. The petitioner was directed tobe detained at District Jail, Jamnagar. At the time when the detention order was passed, the petitioner was already in jail on remand in a Criminal Case. The grounds enclosed with the detention order show that against the petitioner on 14th May, 1998, an offence at Vatava Police Station Case No.5019/98 under Sec.66-B, 65-A, 81, 83, 116-B was registered with regard to engaging in the trade of unauthorised liquor. The said unauthorised liquor was worth Rs.3,54,840/-- which was found in a Maruti-van. At the time when the detention order was passed, investigation in this case was going on. After narrating the case against the petitioner for being engaged in the trade of unauthorised liquor as aforesaid, he has been said to be a bootlegger. It has been further stated in the grounds that on 15th June, 1998, the petitioner with his vehicle went to Vatava near Pirana Tol-naka and he along with his associates brought the vehicle near the godown and when the witness obstructed the loading of the stock of the liquor in the vehicle, the witness was openly beaten and when the people had collected there, he came out with the weapons and created atmosphere of terror. Yet another incident of 30th June, 1998 has been quoted to the effect that while the witness was passing through the Pirana road, the petitioner along with his associates was standing there, the witness was stopped and taking him to be police informer the witness was beaten and although people had gathered there, no one came to their rescue because of the petitioner's fear, as the petitioner came out with the weapons. It has been further stated that the petitioner knows the witnesses very well and was engaged in the business of importing liquor from the other State and was in habit of beating the persons by taking them to be the police informers and used to threaten the witnesses with deadly weapons and therefore, the witnesses could not dare to complain against the petitioner openly. The witnesses have requested that their identity be kept secret. The detaining authority found that the fear of the witnesses was well founded. The identity of the witnesses was kept secret under Sec. 9(2) in the public interest. It has also been observed that in the facts of this case, the other alternative steps was with regard to his extradition etc. were not sufficient and on the grounds as aforesaid, the petitioner was detained.

2. The petitioner's representation against the aforesaid detention order was rejected on 4th October, 1999 by the Government and the Board confirmed the detention order on 29th August, 1999. An

affidavit-in-reply dtd. 23rd January, 2000 has been filed by the detaining authority.

3. Learned counsel for the petitioner submitted that even if all the allegations as aforesaid levelled against the petitioner are taken to be correct, yet it cannot be said to be a case of any breach of public order, and therefore, the detention order deserves tobe quashed and set aside. I called upon learned A.P.P. Mr. H.L. Jani to show as to how the case of breach of public order is made out in the facts of the case, but he has failed to show that the petitioner's activities of bootlegging and others as alleged in the grounds of detention constitute a case of breach of public order.

4. This Court finds that as has been laid down by the Supreme Court in number of cases the grounds on which the detenu has been detained do not constitute a case of breach of public order. At the most it can be said to be a case of law and order. Therefore, the detention order dtd. 13th July, 1999, passed by the Police Commissioner, Ahmedabad City, cannot be sustained in the eye of law and the same is hereby quashed and set aside. It is directed that the petitioner--detenu Dost Mohammad alias Dostu Abdulkarim Baloch is ordered to be released forthwith, if not required under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

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